

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Joshua Raymond Armendariz,

Case No. 20-cv-464 (PJS/HB)

Plaintiff,

v.

ORDER

Chris Rovney, Blue Earth County
Attorney,

Defendant.

This matter is before the Court on Plaintiff's self-styled "Motion: Request for Production of Documents Pursuant to Rule 33 and 34, Fed. R. Civ. P." [ECF No. 44.] To the extent Plaintiff intends by this to move for a Court order compelling Defendant to produce the documents described in the filing, the Court denies the motion.

Nothing in the materials filed by Plaintiff indicates that he previously served these requests on Defendant more than 30 days ago and has filed this motion because he did not receive a response to his requests. Indeed, as of September 21, 2020, Defendant had not received any requests for discovery. [ECF No. 39 at 2.] Thus, to the best of the Court's knowledge, Defendant has not had the opportunity required by Rule 34 to consider the requests, assert objections (if applicable), and gather responsive,

discoverable documents that are relevant to the claims in this case for production to Plaintiff.¹ Fed. R. Civ. P. 34(b).

On the contrary, it appears this motion *is* the Rule 34 request for documents. But Plaintiff cannot combine a request for documents that he is serving for the first time on Defendant with a motion asking this Court to compel Defendant to produce the documents requested. Defendant has a right to a full 30 days to determine whether any of the requests are objectionable and to serve a written response on Plaintiff that specifically describes those objections, describes the documents he is willing to produce, and indicates the extent to which he is withholding otherwise responsive documents because of his objections. Fed. R. Civ. P. 34(b)(2)(B), 34(b)(2)(C).

If Defendant does not respond to Plaintiff within that time, or he responds but Plaintiff concludes the response is insufficient to meet his obligations under the Federal Rules, Plaintiff must first attempt to confer with Defendant's counsel to try to narrow or resolve any disputes. Fed. R. Civ. P. 37(a)(1); L. R. 7.1(a). If that process does not resolve the issues, then—and only then—may Plaintiff file a motion asking that the Court compel Defendant to produce the documents he seeks.

Therefore, the Court denies Plaintiff's motion to compel as premature. However, the Court will instruct Defendant to treat the motion as a Rule 34 request for production of documents, with the due date for a written response calculated from the date the

¹ Although Plaintiff refers in the title of his motion to Federal Rule of Civil Procedure 33, the Court sees only requests for documents in his motion, and nothing that appears to be an interrogatory.

motion was docketed by the Court. The response should be served directly on Plaintiff and not filed with the Court. As provided by Rule 34(b)(2)(B), any documents Defendant agrees to produce should be served on Plaintiff at the same time as the written response unless another reasonable time for production is set forth in the response.

Dated: October 8, 2020

s/ Hildy Bowbeer

Hildy Bowbeer

United States Magistrate Judge _____